THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 18912 of 2007

Dated: 29.11.2007

Between:

Nadimpalli Madhavi

... Petitioner

AND

The Secretary to the Government,
Govt., of Andhra Pradesh (LA),
Secretariat, Hyderabad & others.

... Respondents

Counsel for the petitioner : Sri P. Srikar for
Sri N.V. Anantha Krishna

Counsel for the respondents : Assistant Government Pleader for
Land Acquisition

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 18912 of 2007

ORDER:-

This writ petition is filed for a writ of mandamus to declare the action of the respondents in seeking to acquire the property of the petitioner admeasuring Ac.2-50 cents in Sy.No.194/3 of Isukapalli Village, Kothapalli Mandal, East Godavari District, as illegal and in violation of principles of natural justice.

The petitioner is the owner of Ac.2-50 cents of land in the abovementioned village. Notification dated 30.05.2007 was issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), whereunder the said land was proposed to be acquired. Thereafter, notice under Section 5A of the Act was issued on 09.06.2007, wherein it is stated that the objections, if any, filed by the petitioner will be enquired into on 12.07.2007 at 11.00 a.m. at the office of the Revenue Divisional Officer, Kakinada. Evidently, on the report submitted by respondent No.3, respondent No.2 rejected the objections filed by the petitioner through his proceedings dated 28.07.2007 and the said order is impugned in the present writ petition.

Heard Sri P. Srikar representing Sri N.V. Anantha Krishna, learned counsel for the petitioner and the learned Assistant Government Pleader for Land Acquisition. Sri K.Nageswar Rao, Revenue Divisional Officer, Kakinada, East Godavari District is also present in the Court.

Learned counsel for the petitioner mainly advanced two

contentions, namely, i) the rejection of the petitioner's objection that lands of an extent of Ac.0-72 cents and Ac.1-65 cents in Sy.Nos.153 and 138/2 respectively, which are classified as village site are available, have not been properly considered and no sustainable reasons have been assigned by respondent No.2 for rejecting the said objection, and ii) that no personal hearing was held.

In the counter-affidavit filed by respondent No.3, the specific contention relating to availability of lands in Sy.Nos.153 and 138/2 has not been adverted to. Therefore, this Court on 13.11.2007 directed the District Collector to file additional counter-affidavit on this aspect. Sri K. Nageswar Rao, Revenue Divisional Officer, Kakinada filed an additional counter-affidavit in which it is mentioned as under:

> "I respectfully submit that the lands in Sy.No.153 measuring Ac.0-72 cents and Sy.No.138/2 measuring Ac.1.65 cents are classified as 'Village sites' (Grama Kantham lands) i.e., residential areas of villagers. The said lands are fully occupied with houses of private individuals. There is no space left for providing houses or house sites to the beneficiaries in the said survey numbers. Therefore, the petitioner cannot contend that the village sites are available in Sy.No.153 and 138/2 in Isukapalli village of U.Kothapalli Mandal for grant of house sites to the beneficiaries."

As the said affidavit was vague, on 22.11.2007, again he was directed to file another affidavit by giving details of the persons, who are in occupation of the village site lands and whether they are in legal occupation of the same. He was also directed to explain whether an opportunity of personal hearing was given to the petitioner in the enquiry purportedly held under Section 5A of the Act.

Today, Sri Nageswar Rao filed another affidavit. With respect to the said two survey numbers, he stated as under:

"The petitioner contended that he land was sought to be acquired by the Government for house sites though there is village site available in Isukapalli village. It is submitted that it is a fact that there is village site in Sy.No.138/2 and 153 of Isukapalli Village. The position with regard to each survey number is submitted below:

(i) Sy.No.138/2: It measures Ac.1.65 cents.

1) School Building Ac.0.27 cents.
2) Burial ground (utility) Ac.0.16 cents.
3) Roads Ac.1.45 cents.
4) Proposed for Anganwadi activities & Anjaneya Swamy Idol Ac.0.06 cents

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Total Ac.0.94 cents

The remaining extent of Ac.0.71 cents. The Grama Panchayat reserved it for community purposes i.e., for dumping yard etc.

It is thus fully occupied and there is no vacant village site to grant house sites patas.

(ii) Sy.No.153: It measures Ac.8.72 cents

There are 204 houses existing in the land. The entire village site is fully occupied by villagers and the land vested through their ancestors. They are there for a long time and by settlement and they are having all rights including saleable rights. So, there is no vacant site to be granted as house sites. The house owners are paying taxes to the Gram Panchayat, Isukapalli."

A reading of the additional counter-affidavit and affidavit dated 29.11.2007 reveals patent contradictions in the stand taken by respondent No.3. In the order passed by respondent No.2 vide which he considered the remarks of respondent No.3 on the objections filed by the petitioner, it is merely stated that the site in respect of Sy.No.138/2 is "as in Sy.No.153". Against Sy.No.153 it is mentioned as "there is no vacant site to provide house sites".

From the portion of the additional counter-affidavit reproduced above, he did not raise a whisper that Sy.No.138/2 is

covered by school building, burial ground, roads etc., as mentioned in the latest affidavit filed by him. These contradictions clearly reveal that respondent No.3 had held enquiry without any application of mind.

It is needless to mention that a citizen has got a constitutional right to hold the property and such a valuable right cannot be deprived of by the State or its officers in a casual manner. As held by the Supreme Court in **Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai and others**[1] Section 5A of the Act is the heart of the provisions of the Act giving a citizen valuable right to raise objections against the proposed acquisitions and such a valuable opportunity cannot be reduced by the State and its officials to a mockery.

As regards the contention of the petitioner that opportunity of personal hearing to her was not given by respondent No.3, in her affidavit she categorically averred as under:

> "I submit that the 2nd respondent issued the impugned proceedings Ref.G2/3152/2007 dated 28.07.2007 without hearing me personally and permitting me to adduce oral evidence. In this connection, it is pertinent to mention that the Hon'ble Supreme Court in *Farid Ahmed Abdul Samad v. Municipal Corporation of Ahmedabad* (AIR 1976 SC 2095) held that the heart of Section 5A is the hearing objections and under the sub-section 2 a personal hearing is mandatorily provided for. It was also held that a provision of appeal is also not a substitute for personal hearing provided for under the Section 5A of the Act. I submit that proposal to distribute land to landless poor, irrespective of the loss or detriment caused to any sector of the society, in an urgent manner is only to gain the political mileage.
>
> I respectfully submit that the impugned action of the respondents in entering into my lands and disturbing my peaceful possession and enjoyment over my property without properly disposing my objections under Section

5A of the Land Acquisition Act, 1894 by providing me an opportunity to be personally heard and record the proposed oral evidence, issuing the impugned proceedings Ref.G2/3152/2007 dated 28.07.2007 by the 2nd respondent and without completing the land acquisition proceedings, against the principles of natural justice and without following the due process of law is illegal, arbitrary and violative of the fundamental rights guaranteed to me under Part-III of the Constitution of India. I submit that the respondent actively proceeding with the enquiry and unless appropriate interim orders are granted, I will be put to grave prejudice and irreparable loss."

In paragraph 3 of the counter-affidavit, respondent Nos.3 and 4 stated as under:

"In reply to the averments made in para 2 of the petitioner's affidavit, it is submitted that an extent of Ac.2-50 cents in Sy.No.194/3 of Isukapalli Village of U.Kothapalli Mandal belonging to the following landowners was proposed for provision of house sites to 100 beneficiaries identified under Indiramma Programme.

Sl. No.	Name of the landowner	Sy.No.	Extent Ac. Cts
1.	Nadimpalli Madhavi W/o. Penumatsa Satyanarayana Raju	194/3 (Wet)	2.50

The District Collector, East Godavari, Kakinada has approved the Draft Notification vide Ref.G2/3152/2007 dated 30.05.2007. The same was published as detailed below:

Gazette No. & date	News papers English	Telugu	Locality Publication
A.P. E.G. District Gazette Extraordinary issue No.797/2007 dt.05.06.2007	Pledge Dt.07.06.07	Visalandhra Dt.07.06.07	14.06.2007

> The notices under Section 5A of Land Acquisition Act have been issued to the landowners to attend 5A enquiry on 12.07.2007 vide Revenue Divisional Officer, Kakinada Ref.B1/899/2006 dated 09.06.2007. The said notices have been got published and served on the persons interested therein as per rules under Land Acquisition Act. The landowner Smt. N. Madhavi has filed her objection petition dated 10.06.2007 to the Land Acquisition Officer & Revenue Divisional Officer, Kakinada through registered post with acknowledgement due. She again filed the same petition on 21.06.2007 and 12.07.2007 before the Revenue Divisional Officer, Kakinada. That objection petition was referred to the Tahsildar, U.Kothapalli Mandal for enquiry. In the meanwhile, the advocate for the landowner/writ petitioner has sent a letter dated 14.07.2007 for in of the 5A enquiry notice dated 09.06.2007 to the Revenue Divisional Officer, Kakinada stating that his client Dr.N. Madhavi filed W.P.No.13201 of 2007 before the High Court of A.P., Hyderabad and allowed on 12.07.2007 directing officials not to interfere with the possession of his client till declaration is filed."

In the reply affidavit filed by the petitioner, she categorically denied the claim of respondent No.3 that she was given an opportunity of personal hearing and also pointed out that though she specifically contended in para 5 of the affidavit filed in support of the writ petition that the opportunity of personal hearing was not given to her, respondent No.3 in para 6 of the counter-affidavit, in which her averments contained in para 5 of the affidavit were dealt with, has not specifically denied the said averment of the petitioner. Therefore, having considered these pleadings, on 22.11.2007, respondent No.3 was directed to give the details of personal hearing allegedly held by her. Sri Nageswar Rao, who is present in the Court, candidly admitted that the record maintained by him does not show that opportunity of personal hearing was given to the petitioner. He further admitted that he has not

maintained any minutes of the meeting or obtained the signature of the petitioner evidencing proof of her presence on the alleged date of enquiry.

This Court is amazed at the stand taken by respondent No.3. It is undeniable that enquiry under Section 5A of the Act is statutory in nature and respondent No.3 has not realized his responsibility to maintain proper record of the proceedings held in such a statutory enquiry.

I have therefore no doubt that the alleged personal hearing, as claimed by respondent No.3, is totally false and the petitioner's repeated assertions that she was not afforded the opportunity of personal hearing deserve to be accepted.

For the aforementioned reasons, the writ petition is allowed. Order dated 28.07.2007 passed by respondent No.3 is set aside. The consequential action of publication of declaration under Section 6 of the Act, if any, made in pursuance of the impugned order is also set aside. Respondent No.3 shall hold an enquiry under Section 5A of the Act afresh and give the petitioner an opportunity of personal hearing. It is needless to observe that respondent No.3 would maintain proper record of the proceedings of the enquiry.

Before parting with this case, I feel impelled to observe that in many cases, it is being reported that the Land Acquisition Officers have not been maintaining the record of personal hearing. The Chief Secretary to the Government of Andhra Pradesh shall take note of this serious defect in the procedure being followed by the Land Acquisition Officers in the State and appropriate instructions in this regard may be issued by him to see that proper record of personal hearing during enquiries being held under Section 5A is maintained by them.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP.No.24318 of 2007 filed by the petitioner

for interim relief is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

Date: 29.11.2007

Note:- Registry is directed to furnish a copy of this order to the Chief Secretary to the Government of Andhra Pradesh.

B/o.

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[1] AIR 2005 SC 3520